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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,224	01/03/2000	MARCEL HENK ANDRE JANSENS	702-991961	4808

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EXAMINER

JULES, FRANTZ F

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/462,224	JANSSENS, MARCEL HENK ANDRE
	<b>Examiner</b>	<b>Art Unit</b>
	Frantz F. Jules	3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_ .
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 8-12 and 14 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 January 0200 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_ .
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a)  The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ .
- 4)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_ .
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_ .

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the recitation of the first layer of yielding material is separate from the second layer of yielding material, in claim 8, lines 8-9, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8-12, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ortwein'103.

Claims 8-12, 14

Ortwein'103 teaches all the limitations of claims 8-12, 14, by showing in figs. 3-4, a rail track comprising at least two parallel rails (21) supported by a non-compressible base body (26) provided with a channel-like recess for receiving the rails (21) such that the running surface of the head of the rail lies free, with the bottom of the channel-like recess provided with a first layer of yielding material (17) which extends under the bearing surface of the foot of the rail, and with the side surfaces of the rails (12.1) covered with a second layer (15A, 15B) of yielding material, wherein the first layer of

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yielding material (17) is separate from the second layer (15A, 15B) of yielding material and the space between the second layer and the channel -like recess is filled with a filler body of non-compressible material (12); the elastic material being used as sound-absorbing material as per column 1, lines 58-63, and the base body can be made of concrete or other type material.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tuinenburg in view of Dortmunder Union.

Claims 8-12, 14

Tuinenburg teaches all the limitations of claims 8-12, 14 except for a rail track being supported by a concrete base body and having second layer of yielding material of different stiffness value on each side of the rail. The general concept of providing a concrete base body to support a rail track with second layer of yielding material of different stiffness value on each side of the rail is well known in the art as illustrated by Dortmunder Union, see fig. 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Tuinenburg to include the use of a concrete base body to support a rail track with second layer of yielding material of different stiffness value on each side of the rail in his advantageous rail track as taught by

Dortmunder in order to prevent bending or deflection in the rail track thereby increasing safety in the system.

***Response to Arguments***

6. Applicant's arguments filed 03/01/02 have been fully considered but they are not persuasive.

A. Summary of applicant's argument

In the amendment, applicant traversed the rejection of claims 812, 13, currently amended for the following reasons:

1. Objection to the drawings is improper as separate yielding material is shown.
2. The reference cited in the previous rejection, Hogson, Ortwein, fails to mention the claim limitation of maximizing stiffness value in horizontal direction to be greater than that of the vertical direction.
3. The incorporation of the claim limitation of wherein the first layer of yielding material is separate from the second layer of yielding material in claim 8 should overcome the previous prior art rejections.

B. Response to applicant's argument

1. In response to applicant's argument that the drawings show first and second layers of yielding material that are separate, it must be recognized that the drawings do not provide clear indication that materials 9 and 10 are separate. Even though applicant argue that the mere fact that the cross-hatching are different for material 9 and 10 is considered to be proof that the first and second layers are different, this is not in fact revealed in the figures.

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2. As to applicant's argument number two, it must be recognized that it's factual and accurate that all of the references of record considered teach the limitation of second yielding material in horizontal configuration being greater than that of first yielding material at the bottom of the rail. This teaching is due to the fact that the figures show different thickness for the yielding material on the side of the rail than that of the material at the bottom of the rail. As long as the references disclose this fact in the figures, it doesn't have to be mentioned in the description.

3. Regarding applicant's argument number 3, it should be noted that the added claim limitation of the first layer of yielding material is separate from the second layer of yielding material to claim 8 is weak to overcome the rejection of claims 8-12, 14 as Ortwein'103 do in fact disclose first layer of yielding material that is separate from a second layer of yielding material supporting the rail in figs. 3-4. Also, the first and second layers of yielding materials do have different stiffness as the shape or sizes are different. Moreover, this argument is moot in light of the new grounds of combination art rejection which meet all the limitations of claims 8-12, 14 for the various reasons listed above.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dortmunder Union is cited to show related railtrack having first layer of yielding material separated by a second layer of yielding material.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday from 07:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano, can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz Jules  
Patent Examiner  
Art Unit 3617

FFJ

April 19, 2002



S. JOSEPH MORANO  
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